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ALEXANDER L. STEVAS,
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No. 84-76 (3)

IN THE

Supreme Court Of The United States

October Term, 1984

NELL HUNTER, et al, individually, and on behalf of all other members of Board of Registrars in the State of Alabama,
Appellants,

vs.

VICTOR UNDERWOOD and CARMEN EDWARDS, for themselves and all others similarly situated,
Appellees.

APPEAL FROM THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

JOINT APPENDIX

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APPEAL DOCKETED JULY 9, 1984.
PROBABLE JURISDICTION NOTED OCTOBER 9, 1984.

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Opinion of the United States Court of Appeals for the Eleventh Circuit, April 10, 1984, which is the judgment in question, is printed in the Appellants' Jurisdictional Statement heretofore filed, at Appendix A.

Memorandum Opinion of the United States District Court for the Northern District of Alabama, August 11, 1978, a relevant opinion, is printed in the Appellants' Jurisdictional Statement heretofore filed, at Appendix D.

Memorandum Opinion of the United States District Court for the Northern District of Alabama, December 23, 1981, a relevant opinion, is printed in the Appellants' Jurisdictional Statement heretofore filed, at Appendix E.

RELEVANT DOCKET ENTRIES

	Date
Complaint filed	June 21, 1978
Motion of plaintiffs for preliminary injunction filed	June 21, 1978
On hearing on motion of plffs for preliminary injunction before the Hon. Frank H. McFadden – Oral motion of plffs to admit Neil Bradley Pro Hac Vice – Granted – Testimony of plaintiffs – Plffs rest – Oral motion of defts for directed verdict – Ruling reserved – Testimony of defts – Defts rest – Rebuttal testimony of plffs – Plffs rest – Argument of counsel on motion of deft to dismiss – All matters taken under advisement	July 19, 1978
Clerk's Court Minutes that matter of preliminary injunction is taken under advisement and motion of defts to dismiss is taken under advisement; written findings of fact, conclusions of law and judgment to be entered by the court – filed and entered	July 19, 1978
Memorandum Opinion – filed and entered	August 11, 1978
ORDER that plffs' motion for preliminary injunction is overruled; further that defts' motion to dismiss is granted in part and causes of action numbered I, II and III are dismissed; further that defts' motion for stay is granted; further that plffs' motion for admission of additional exhibits is granted; ruling on the motion to dismiss as to the fourth cause of action is held in abeyance pending further briefs; any such briefs should be submitted within 20 days of the date of this order – filed and entered	August 11, 1978
Memorandum opinion dated February 2, 1979 filed and entered	February 5, 1979
ORDER dated February 2, 1979 in accordance with the memorandum opinion entered contemporaneously	

Date

that defendants's motion to dismiss is granted with respect to plaintiffs' fourth cause of action; further that the other causes of action having been heretofore dismissed, the case is dismissed, with costs taxed against the plaintiffs filed and entered ..... February 5, 1979

Notice of appeal of plaintiffs from the final judgment entered on February 2, 1979 filed ..... February 23, 1979

Transcript of proceedings had before the Honorable Frank H. McFadden in Birmingham, Alabama on July 19, 1978 filed ..... April 2, 1979

Motion of defendants for summary judgment, filed ..... October 15, 1979

Opposition of plffs to defendants' motion for summary judgment, filed ..... October 19, 1979

Motion of plffs to certify the class action allegation, filed ..... October 25, 1979

Certified copy of judgment, USCA, issued as and for the mandate on Oct. 29, 1979, that the judgment of the District Court is VACATED in part and REVERSED in part; and the same is REMANDED to the District Court in accordance with the opinion of Court; it is further ORDERED that the defts-appellees pay to the plffs-appellants the costs on appeal, to be taxed by the Clerk of Court — filed ..... November 2, 1979

Motion of plffs for preliminary injunction, filed ..... January 5, 1980

Response of defendants to plff's motion for preliminary injunction, filed ..... January 16, 1980

NOTICE OF INTERLOCUTORY APPEAL given by Plaintiffs from the denial de facto of the motion for preliminary injunction filed in this action on the 15th day of January, 1980 — filed ..... February 7, 1980

Date

Memorandum Opinion, filed ..... February 14, 1980

ORDER in accordance with the Memorandum Opinion entered contemporaneously that plffs' motion for preliminary injunction is OVERRULED, filed; entered 02-14-80 ..... February 14, 1980

Certified copy of ORDER from U. S. Court of Appeals for the Fifth Circuit that the motion of appellants for an injunction pending appeal is DENIED, filed, filed February 19, 1980 ..... March 28, 1980

ORDER dated April 17, 1980, that Counts one, two and three of the complaint are dismissed in accordance with the Memorandum Opinion entered by the Court August 11, 1978—further that the remaining Count in this action, Count four, be maintained by plffs as a class action on behalf of persons as set out in this order—further that the suit may be maintained against the defts as a class representing all members of the sixty-seven county boards of registrars in the State of Alabama, filed; entered 04-18-80 ..... April 18, 1980

Certified copy of judgment, U. S. Court of Appeals, dated July 15, 1980, and issued as mandate September 11, 1980, affirming the order of the District Court and ordering that plaintiffs-appellants pay to defendants-appellees the costs on appeal to be taxed by the Clerk, USCA, with certified copy of opinion, bill of costs, original record and two supplemental records attached (Kravitch, Henderson and Reavley, Circuit Judges) — filed ..... September 15, 1980

Motion of the plffs for leave to amend the complaint with amendment thereon, filed — 05-15-81 GRANTED; Entered 05-15-81 ..... April 24, 1981

ANSWER of the defts to the complaint, filed ..... May 6, 1981

Motion of the defts to dismiss or in the alternative, Motion to strike plffs' motion to amend complaint

Date

by adding a fifth cause of action, filed — 05-15-81 OVERRULED; Entered 05-15-81 ..... May 8, 1981

Request of the plffs for admission by the defts with exhibits attached, filed ..... May 12, 1981

Motion of the defts to dismiss fifth cause of action, filed ..... June 5, 1981

ORDER ON PRE-TRIAL HEARING held May 11, 1981, dated July 2, 1981, that Joseph J. Trucks is DISMISSED as pty deft, filed; Entered 07-08-81 ..... July 6, 1981

On trial before the Hon. Frank H. McFadden — Argument of counsel on motion of defendants for summary judgment — oral order overruling motion of defendant for summary judgment for failure to exhaust administrative remedies and holding motion of defendant to dismiss fifth cause of action in aveyance entered — Motion of defendants to amend answer to fourth cause of action filed — Oral order granting motion to amend answer entered — Evidence of plaintiffs presented (no testimony) — Plaintiffs rest — Oral motion — Oral motion of defendants to dismiss — Ruling reserved — Testimony of defendants — Defendants rest — Taken under advisement ..... July 21, 1981

Clerk's Court Minutes dated July 21, 1981 that this case is taken under advisement; written findings of fact, conclusions of law and judgment to be entered by the court; filed; Entered 07-22-81 ..... July 22, 1981

ORDER (NOTICE OF ACTION RAISING THE QUESTION OF CONSTITUTIONALITY OF A STATUTE OF THE UNITED STATES) that pursuant to 28:2403 the court certified the Attorney General that there is drawn in question in this case the constitutionality of the Act of June 25, 1868, ch. 70, 15 Stat. 73, filed; Entered 07-29-81 ..... July 29, 1981

Date

Memorandum Opinion filed;
entered 12/23/81 ..... December 23, 1981

ORDER in accordance with the memorandum of opinion that judgment is granted in favor of the defendants and that the complaint is DISMISSED; costs taxed to the plaintiffs, filed;
entered 12/23/81 ..... December 23, 1981

Notice of appeal of plffs from the final judgment entered on 4/18/80 and
12/23/81 filed ..... December 29, 1981

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

VICTOR UNDERWOOD and CARMEN EDWARDS, for themselves and all others similarly situated	)	
PLAINTIFFS,	)	
vs.	)	CA78 M0704S
NELL HUNTER, JOSEPH J. TRUCKS, individually and as members of the Board of Registrars of Jefferson Co., and THOMAS A. JERNIGNAN, CLARICE B. ALLEN, CLEO F. CHAMBERS, individually and as members of the Board of Registrars of Montgomery Co., on behalf of all other members of Boards of Registrars in the State of Alabama	)	
DEFENDANTS.	)	

COMPLAINT

1. This action arises under the First, Fifth, Thirteenth, Fourteenth and Fifteenth Amendments of the Constitution of the United States and 42 U.S.C. §§1971, 1973, 1981 and 1983. Jurisdiction is vested in this Court by 28 U.S.C. §§1331(a), 1343(3) and (4), and 2201. The matter in controversy exceeds, exclusive of interests and costs, the sum of ten thousand dollars. This is an action for appropriate equitable relief and declaratory judgment of the unconstitutionality of *Ala. Const.*, Art. VIII, §182 (1901), to the extent that it disqualifies from

being registered or voting persons convicted of certain offenses, and to prevent deprivation under color of state law, statute, ordinance, regulation, custom or usage of rights, privileges and immunities secured to plaintiff, including the rights to due process, equal protection, and the unabridged participation in the electoral process protected by the First, Fifth, Thirteenth, Fourteenth, and Fifteenth Amendments of the Constitution of the United States and by Title 42 of the United States Code, §§1971, 1973, 1981 and 1983.

2. Plaintiff Victor Underwood is a white citizen of Alabama, over the age of 21 years, and a resident of Jefferson County.

3. Plaintiff Carmen Edwards is a black citizen of Alabama, over the age of 19 years, and a resident of Montgomery County.

4. Defendants Nell Hunter and Joseph J. Trucks are members of the Board of Registrars of Jefferson County. There is presently a vacancy on said board. Defendants Thomas A. Jernignan, Clarice B. Allen, and Cleo F. Chambers are members of the Board of Registrars of Montgomery County. All defendants are sued individually and in their official capacities as members of the Boards of Registrars, and as representatives of the class of all members of the Boards of Registrars of the counties of the State of Alabama.

5. Attorney General William Baxley shall be served a copy of this complaint so that he may defend the constitutionality of the State Constitution provision challenged herein. 28 U.S.C. §2403(b); *Ala. Code*, §6-6-227 (1975).

6. The plaintiffs bring this action on their own behalf and on behalf of all others similarly situated and against the defendants in their official capacities, as individuals and as representatives of their class pursuant to Rule 23 of the F.R.Civ.P. The plaintiffs' class includes all persons disqualified from being registered or voting by operation of *Ala. Const.*, Art. VIII, §182 (1901). The defendants' class includes members of boards of registrars of Alabama. The prerequisites of subsections (a) and (b) (2) of Rule 23 are satisfied. There are common questions of law and fact affecting the several rights

of citizens to register and to vote. The members of the classes are so numerous as to make it impracticable to bring them all before this Court. The claims or defenses of the parties are typical of the claims or defenses of the classes as a whole. A common relief is sought. The interests of each class are adequately represented by the named parties, and the parties opposing each class have acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive and declaratory relief with respect to the class as a whole.

7. *Ala. Const.*, Art. VIII, §182 (1901), disenfranchises persons who have been convicted of certain named offenses, any crime punishable by imprisonment in the penitentiary, or any infamous crime or crime involving moral turpitude. Because any crime carrying a maximum penalty of more than one year is "punishable by imprisonment in the penitentiary," only certain offenses carrying a penalty of 12 months or less, or a fine (hereinafter referred to as misdemeanors and minor felonies) are disenfranchising offenses, namely, the ones listed in §182 and those "involving moral turpitude."

8. Victor Underwood was a duly qualified and registered voter in Jefferson County. Because of a conviction for issuing a worthless check, his name was purged from the registration rolls by the Jefferson County Board of Registrars. Carmen Edwards is otherwise qualified to register to vote in Montgomery County but has been denied registration by the Montgomery County Board of Registrars because of her conviction for issuing a worthless check, an offense which is considered to be a "crime involving moral turpitude."

9. There is between the parties an actual controversy as herein set forth. The plaintiffs and others similarly situated and affected on whose behalf this suit is brought suffer irreparable injury by reason of the acts herein complained of. Plaintiffs have no plain, adequate or complete remedy to redress the wrongs and unlawful acts herein complained of other than this action for a declaration of rights and an injunction. Any remedy to which plaintiffs and those similarly situated could be

remitted would be attended with such uncertainties and delays as to deny substantial relief, would involve multiplicity of suits and cause them further irreparable injury, damage and inconvenience.

FIRST CAUSE OF ACTION

10. The misdemeanors and minor felonies listed in §182 as disenfranchising offenses unconstitutionally impinge upon the franchise because they deny the franchise without a compelling state interest in violation of the First, Fifth, and Fourteenth Amendments of the Constitution of the United States.

SECOND CAUSE OF ACTION

11. The misdemeanors and minor felonies listed in §182 as disenfranchising offenses deny plaintiffs and the class they represent the equal protection of the laws as guaranteed by the Fourteenth Amendment of the Constitution of the United States because more serious offenses are not disabling.

THIRD CAUSE OF ACTION

12. Disfranchisement for conviction of a "crime involving moral turpitude" is based on a definition that is vague and indefinite and denies plaintiffs and the class they represent the right to register and to vote in violation of the First, Fifth, and Fourteenth Amendments of the Constitution of the United States.

FOURTH CAUSE OF ACTION

13. The list contained in §182 was specifically adopted because of its supposed disproportionate impact on blacks, with the intent to disfranchise blacks.

14. The disfranchising provisions of §182 abridge the right to vote on the basis of race, in violation of the First, Fifth, Thirteenth, Fourteenth and Fifteenth Amendments of the Constitution of the United States, and 42 U.S.C. §§1981 and 1983.

RELIEF

WHEREFORE, Plaintiffs respectfully pray that this Court will take jurisdiction of this cause and do the following:

A. Find that the named plaintiffs and defendants are adequate representatives of their respective classes and allow this cause to proceed as a class action;

B. Grant the plaintiffs a preliminary injunction, to be made permanent later, requiring that they and the class they represent be restored to the rolls of those registered to vote or be allowed to register without regard to *Ala. Const.*, Art. VIII, §182 (1901);

C. Declare *Ala. Const.*, Art. VIII, §182 (1901), to be unconstitutional insofar as it applies to offenses carrying a penalty of one year or less, and enjoin its further application;

D. Grant the plaintiffs their costs and reasonable attorneys' fees and expenses.

Submitted by,

/s/ EDWARD STILL

Edward Still
601 Title Building
Birmingham, AL 35203
205/322-1694

Of Counsel
Laughlin McDonald
Neil Bradley
Christopher Coates
52 Fairlie Street, NW
Atlanta, GA 30303

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

VICTOR UNDERWOOD and CARMEN EDWARDS, for themselves and all others similarly situated	)	
Plaintiffs	)	
v	)	CASE NO. CA 78 M0 704S
NELL HUNTER, JOSEPH J. TRUCKS, individually and as members of the Board of Registrars of Jefferson Co., and THOMAS A. JERNIGAN, CLARICE B. ALLEN, CLEO F. CHAMBERS, individually and as members of the Board of Registrars of Montgomery Co., on behalf of all other members of Board of Registrars in the State of Alabama	)	
Defendants	)	

ANSWER

Come now the Defendants in the above captioned case and for answer to Fourth Cause of Action in the Complaint say as follows:

FOURTH CAUSE OF ACTION

1. Defendants deny all the averments and allegations contained in paragraph 13 of the Fourth Cause of Action.

2. Defendants deny all the averments and allegations contained in paragraph 14 of the Fourth Cause of Action.

3. Defendants deny that the Plaintiffs are entitled to any relief.

AFFIRMATIVE DEFENSES

1. For that the Fourth Cause of Action fails to state a claim or cause of action against the Defendants upon which relief can be granted.

2. For that the State of Alabama may constitutionally exclude from the franchise felons or individuals who have committed crimes involving moral turpitude.

3. For that the State of Alabama has a compelling state interest in excluding from the franchise felons or those individuals who have been convicted of crimes involving moral turpitude.

4. For that the disinfranchisement of those convicted of felonies or crimes involving moral turpitude bears a rational relationship to the achieving of a legitimate state interest.

5. Based on an opinion rendered by the Attorney General of the State of Alabama which holds that conviction of a municipal ordinance will not disqualify a person from voting even if such conviction would constitute a crime involving moral turpitude if prosecuted under state law, the Plaintiffs have no standing to bring this action or to serve as class representatives.

Respectfully submitted

/s/ JAMES S. WARD

James S. Ward
Special Assistant Attorney General
for Defendants
1933 Montgomery Highway
Birmingham, Alabama 35209
939-0275

CERTIFICATE OF SERVICE

I certify that I have served a copy of the above and foregoing Answer upon the Honorable Edward Still, Commerce

Center, Suite 400, 2027 1st Avenue North, Birmingham, Alabama 35203, by placing a copy of same in the United States mail, postage prepaid and properly addressed on the 6 day of May, 1981.

/s/ JAMES S. WARD

Of Counsel

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

VICTOR UNDERWOOD and CARMEN EDWARDS, for themselves, et al	)	
Plaintiffs	)	
v	)	CA 78-M-0704
NELL HUNTER, et al	)	
Defendants	)	

MOTION TO AMEND ANSWER

Come now the Defendants in the above styled cause, by and through their attorney of record, and respectfully move this Court for an Order allowing Defendants to amend the answer previously filed by them to Plaintiffs' Fourth Cause of Action by adding the following affirmative defenses:

1. For that the Plaintiffs have failed to exhaust available and existing state or city administrative remedies which would restore to them the right to vote.

Respectfully submitted

Stuart & Ward

/s/ JAMES S. WARD

Special Assistant Attorney General
for Defendants
1933 Montgomery Highway
Birmingham, Alabama 35209
939-0276

CERTIFICATE OF SERVICE

I certify that I have served a copy of the above and foregoing Motion to Amend Answer upon the Honorable Edward Still, by hand delivering a copy of same to him in open Court on this the 21 day of July, 1981.

/s/ JAMES S. WARD

Of Counsel

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

October Term, 19

No. 80-7084

D. C. Docket No. CA 78-M-704-S

VICTOR UNDERWOOD, and CARMEN EDWARDS,
for themselves and all others similarly situated,
Plaintiffs-Appellants,

versus

NELL HUNTER, JOSEPH J. TRUCKS, Individually
and as members of the Board of Registrars
of Jefferson County, ET AL.,
Defendants-Appellees.

Appeal from the United States District Court for the
Northern District of Alabama

Before KRAVITCH, HENDERSON and REAVLEY, Circuit Judges.

JUDGMENT

This cause came on to be heard on the transcript of the record from the United States District Court for the Northern District of Alabama, and was argued by counsel;

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the order of the District Court appealed from, in this cause be, and the same is hereby, affirmed;

IT IS FURTHER ORDERED that plaintiffs-appellants pay to defendants-appellees, the costs on appeal to be taxed by the Clerk of this Court.

JULY 15, 1980

ISSUED AS MANDATE: SEP 11 1980

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 80-7084

VICTOR UNDERWOOD, and CARMEN EDWARDS,
for themselves and all others similarly situated,
Plaintiffs-Appellants,

versus

NELL HUNTER, JOSEPH J. TRUCKS, individually
and as members of the Board of Registrars of
Jefferson County, Et Al.,
Defendants-Appellees.

Appeal from the United States District Court for
the Northern District of Alabama

(JULY 15, 1980)

Before KRAVITCH, HENDERSON and REAVLEY, Circuit Judges.

PER CURIAM:

Plaintiffs appeal the denial of their preliminary injunction attacking the constitutionality of the Alabama Constitution, Art. VIII, § 182 (1901), as it operates to disenfranchise them. We affirm.

Procedural History

The confusing route through which this case reached this court for the second time requires a brief digression. On June 21, 1978, plaintiffs filed a complaint seeking a declaratory judgment that § 182 is unconstitutional. Plaintiffs asserted four grounds for relief: (1) that the misdemeanors and minor felonies listed in § 182 as disenfranchising offenses unconstitutionally impinge upon the franchise because they deny the franchise without a compelling state interest in violation of the First, Fifth, and Fourteenth Amendments; (2) that the disenfranchising offenses deny plaintiffs the equal protection of the

laws because more serious offenses are not disabling; (3) that disenfranchisement for conviction of a "crime involving moral turpitude" is based on a definition that is unconstitutionally vague; and (4) that the list of offenses was specifically adopted with the intent to disenfranchise blacks and, in fact, abridges the right to vote on the basis of race. Defendants moved to dismiss the complaint for failure to state a claim upon which relief could be granted.

Plaintiffs also sought a preliminary injunction restoring them to the voting rolls which was premised on the first three causes of action, but not the fourth. On July 19, 1978 the court conducted a hearing on the preliminary injunction, but subsequently expanded it to include arguments on the motion to dismiss and was presented with evidence outside the pleadings. The court denied the preliminary injunction and granted the motion to dismiss on August 11, 1978 with respect to the first three causes of action, stating that "if the motion to dismiss is treated as motion for summary judgment under Rule 56, it is due to be granted with respect to the first three causes of action." This court reversed because the district court failed to comply with F.R.Civ.P. 56 by providing a 10-day notice period required when a motion to dismiss is treated as a motion for summary judgment. Underwood v. Hunter, 604 F.2d 307 (5th Cir. 1979).

The district court had also denied the fourth cause of action as failing to state a claim upon which relief could be granted. This court reversed, stating that plaintiffs' allegations, if supported by facts developed in a later proceeding, did state a claim. *Id.*

On remand, plaintiffs again moved for a preliminary injunction in the district court, which was denied in a memorandum opinion on February 14, 1980.[1] The present case is plaintiffs' appeal from that order.

[1]On April 18, 1980, the trial court again reviewed plaintiffs' first three causes of action, and again dismissed on the basis of its August 11, 1978 memorandum opinion. With respect to count four, the court granted plaintiffs' motion for class certification with regard to both plaintiff and defendant classes.

Merits

A preliminary injunction is an extraordinary remedy and its denial will be overturned only for an abuse of discretion. Compact Van Equipment Co. v. Leggett & Platt, Inc., 566 F.2d 952 (5th Cir. 1978). To be entitled to a preliminary injunction, a movant must establish each of four prerequisites: (1) a substantial likelihood of ultimately prevailing on the merits; (2) a showing of irreparable injury unless the injunction issues; (3) proof that the threatened injury to the movant outweighs whatever damage the proposed injunction may cause the opposing party; and (4) a showing that the injunction, if issued, would not be adverse to the public interest. *Id.*; Comerisch v. University of Texas, 616 F.2d 127, 130 (5th Cir. 1980).

Plaintiffs fail to meet the second element, a showing of irreparable harm. Although each had been disenfranchised for conviction of a crime involving moral turpitude, an individual in Alabama can have his right to vote restored if pardoned. ALA. CODE § 12-14-15, *see* § 17-3-5. Victor Underwood was purged from the voting list in Jefferson County on April 30, 1977 for conviction for issuing a worthless check 2½ to 3 years prior to the July 19, 1978 hearing on the initial preliminary injunction. Although officials of the Jefferson County Board of Registrars informed Underwood of the procedure for having his voting rights restored, he has made no effort to comply, nor has he alleged any difficulty in complying with this procedure. Carmen Edwards was purged from the voting list of Montgomery County pursuant to her conviction for the crime of issuing a worthless check in May 1978. Although she attempted to receive a pardon, for purposes of restoration of her voting rights, from the Mayor of Montgomery, she was told that she must wait at least a year. She has not sought a pardon since the waiting period has elapsed.

Neither plaintiff, then, has presented any evidence which indicates that a proper application for a pardon would not have been granted. Under these circumstances, we cannot find that

granting a motion for a preliminary injunction is either necessary or appropriate. By affirming the district court's denial of a preliminary injunction, we intimate no view as to the merits of plaintiffs' allegation attacking the constitutionality of § 182 of the Alabama Constitution.

AFFIRMED.

DR. J. MILLS THORNTON,

[49] having been first duly sworn, was examined and testified as follows:

Q. Dr. Thornton, what do you teach and where?

A. I teach the History of the South at the University of Michigan in Ann Arbor, Michigan.

Q. In addition to the resume which has been received as Defendant's Exhibit 16, have you conducted your own research into the history of the south around the period of time 1901?

[50] A. Yes, I have.

Q. And what has that research consisted of, please, sir?

A. Well, I have worked in the post-bellum period generally on a number of research projects, but in particular the Constitutional Convention of 1901. I did a thesis as an undergraduate centering on the origins of disfranchisement in Alabama.

Q. And that was your Ph.D.?

A. No, that was not, that was a B.A. thesis.

Q. B.A.?

A. Yes.

Q. Where was that?

A. At Princeton University.

Q. Based on your reading and your research and your education that you received, are you familiar with the period of time up to and including the Convention of 1901 in this State?

A. Yes, I am.

Q. And are you familiar with the Constitutional Convention of 1901?

A. Yes, I am.

Q. And I will ask you, Dr. Thornton, in your opinion, is it necessary in talking about the 1901 Convention to examine it and look at it as a whole as opposed to any pieces?

[51] A. Yes, absolutely.

Q. And is it necessary then, in order to determine what the intent of the drafters of Section 182 might have been, to examine the Convention as a whole and the suffrage article which was passed as a whole?

A. Yes.

MR. STILL: Objection, leading.

THE COURT: Overruled.

Q. (By Mr. Ward) Doctor, what, in your opinion, is the purpose or was the purpose of the Alabama Constitutional Convention of 1901?

A. The Alabama Constitutional Convention of 1901 was called to prevent a recrudescence of the Populist Revolt which had convulsed Alabama politics throughout the 1890's, throughout the period of 1890 and the Spanish American War. It was intended to limit the franchise in Alabama in such a way that it would be impossible for the rule of the Democratic Party, the hegemony of the Democratic Party in the State again to be effectively challenged.

Q. What are you saying then, Dr. Thornton, is there were political reasons for calling the Convention?

A. That is correct.

Q. And was the eventual passage of 182 part of this purpose or this scheme, this political scheme?

A. Yes, it was.

[52] Q. Doctor, what if anything did the Convention do in order to accomplish this purpose? What did they pass, if anything?

A. Well, there are two halves of the scheme, as you would call it. The first is the Suffrage Article, and the second is the article apportioning the State Legislature. But the Suffrage Article is the primary element in the effort to structure Alabama politics the way they wished.

Q. Could you explain to the Court, please, sir, what eventually passed as you were calling the Suffrage Article? If I understand, there is a permanent part and a temporary part. If you could explain that to the Court, please, sir.

A. All right. The Suffrage Article as it finally comes from the Convention has several parts to it. There is a set of requirements that are applicable from the beginning on all voters. Those include residency requirements, two years in the State and one year in the county and six months in the precinct, a poll tax and the crimes section, which is at issue here.

Then in addition to those requirements which take effect from the ratification and proclamation of the Constitution, there are two separate suffrage plans known as the temporary plan and the permanent plan. Under the temporary plan which was in effect until January 1st of 1903, that is for a year and one month because the Constitution was proclaimed in effect at the end of November [53] of 1901, so for the month of December of 1901 and then the calendar year 1902, the temporary plan is in effect. Under the temporary plan, all persons, all adult males who can meet the residency requirement and the crimes disfranchisement requirement may register, if they have served honorably in the armed forces, in the armed forces in any war — I started to say the armed forces of the United States, but it is not just the armed forces of the United States, because it includes the Confederate Army as well. So the armed forces in any of the wars of the United States, or if they are direct descendants of any person who did so, or if they are of good character and understand the obligation and duties of a citizen. That temporary plan goes out of effect on January 1st, 1903, and the permanent plan comes into operation. Under the permanent plan, any person may register who is an adult male meeting the other requirements, and who either can read and write the English language and has been employed for 12 months preceding the time he offers to register, or who owns 40 acres of land on which he resides, or owns an amount of either real estate or personal property assessed for taxes at $300 on which the taxes have been paid.

Q. Dr. Thornton, was the poll tax part of the suffrage plan that was passed?

A. The poll tax is a part of the suffrage plan that is enacted. On the other hand, the poll tax is not an element in registration. The poll tax is an element in voting.

* * * *

[54] Q. Did Section 182, which is the crime provision, apply to those people who were to be registered under the temporary plan?

A. Yes, it did, just as does residency.

Q. Any others?

A. It would be residency and crimes, and then that you be over the age of 21 and a male.

* * * *

[56] Q. Dr. Thornton, based on your study and your research and your reading, in your opinion, I will ask you whether [57] or not disfranchisement of poor whites was an important — as important intention and motive of the delegates to the Convention of 1901 as was the disfranchisement of blacks?

A. Absolutely. The two halves of the threat that Populism has posed during the 1890's are that poor whites have left the Democratic Party and thus have made general elections matter in the State politics, and that they are appealing to black voters and turning black voters into the balance of power. Consequently, the way to prevent a recrudescence of Populism must involve dealing with the threat on both levels. Both in eliminating the black vote that had — the courting of which had represented the principal threat from the point of view of conservative white democrats, and the elimination of poor white voters who had been the backbone of the Populist Party, the members of the Farmer's Alliance and the people who had bolted the Democratic Party in the first place.

Q. Would it be fair to say, in your opinion, that Section 182 was part of the plan to prevent and disfranchise the poor whites as well as any blacks?

A. Yes, that's right. The entire Suffrage Article has that aim in Section 182, as much as other sections.

Q. Doctor, can we then look at some things that you have brought in support of that opinion? Can you tell the Court who John Knox was, very briefly?

[58] A. John Knox was the President of the 1901 Convention, a lawyer from Anniston.

Q. Did he make any statement a few years after the Convention of 1901 concerning what the motives of the people there were?

A. Yes. In 1905, he wrote an article for *Outlook Magazine*. *Outlook* was a national magazine comparable to *Time* or *Newsweek* today, describing the motives of the delegates to the Convention of 1901.

* * * *

[59] Q. (By Mr. Ward) I will ask you, Dr. Thornton, in reading that article, what, if anything, John Knox said concerning the intention of the delegates of the 1901 Convention.

A. Well, he makes the point that whereas he concedes that the temporary plan has on its face the intention of enfranchising whites and not blacks, he makes the point that that is the only possible way that the Constitution could have been ratified. They had to get it past the voters. But he says the principal goal of the delegates was to place the Suffrage, as he says, on a high plane, and that they limited the time of the application of the temporary plan quite severely to one year, 13 months, and that as soon as the permanent plan went into effect, that it would apply across the board to the standard phrase from the Convention, from the delegates as to all the ignorant and the vicious.

Q. And that was referring to the whites?

[60] A. That refers to blacks and whites.

Q. In speaking of the efforts to extend the temporary plan, what, in your studies, does the leadership of the Democratic Convention — what was their intention along those lines, along the extension of the temporary plan beyond January 1, 1903?

A. Well, there are repeated — let me say this. There are essentially three points of view among the delegates about Suffrage, or three blocs. This is excluding Republican and Populist delegates who are opposed to disfranchisement of any kind. But among the democratic delegates, there are those who favor an immediate conversion to a plan which would disfranchise poor whites and blacks equally and confine the electorate at once to literate whites. This is a small minority among the delegates. Their amendment, in fact, when the test vote comes, their amendment is rejected 109 to 24, I believe is the vote.

Then there are delegates chiefly from rural North Alabama counties who are in favor of enfranchising all whites and disfranchising all blacks, and then there are the delegates who are actually the majority of the Democratic Party and who constitute the leadership of the Convention, who favor the disfranchisement of poor whites, but believe that they cannot get the Constitution ratified unless they have in something like the temporary plan, which [61] will leave white voters in the North Alabama counties to vote in favor of ratification. Now these, this group is defined as a majority of the Convention by a series of efforts on the part of this group that likes the temporary plan and doesn't like the permanent plan, because the permanent plan would disfranchise poor whites who want to extend the time of operation of the temporary plan. There are no less than three efforts made during the course of the Convention to extend the time of the temporary plan. First to January 1st, 1906, which is beaten back; then to January 1st, 1905, which is beaten back, and then to allow persons who might become 21 by January 1st, 1905 to register under the temporary plan before January 1st, 1903, even though they were not yet 21, but to begin voting when they did become 21. All three of those efforts are beaten back, and those roll call votes define who in the Convention is in favor of the temporary plan as an expedient to get the Constitution ratified and who are much more committed to black disfranchisement and the enfranchisement of all whites.

Q. Then I will ask you whether or not the efforts to defeat the extension of the temporary plan is a factor, in your opinion, that the delegates of the Convention were just as concerned about disfranchising poor whites as they were blacks?

A. Yes, that's correct.

* * * *

[62] Q. And if I may, to read you this and to state if that is your understanding according to McMillan, "In 1905 Francis G. Caffee, a lawyer who was practicing in Montgomery at the time of the Alabama Convention, wrote concerning its motives:

'It was generally wished by leaders in Alabama to disfranchise many unworthy white men, to rid the State eventually, so far as could possibly be done by law, of the corrupt and ignorant among its electorate, white as well as blacks. The poll tax and vagrancy clauses were put into the Constitution.'" Is that the reference and quotation to which you refer?

A. Yes.

* * * *

[63] Q. (By Mr. Ward) Dr. Thornton, I believe before you testified, did you not, that Section 182 of the Constitution, the crimes provision and the property qualifications and the poll tax, applied as well to those who registered under the temporary plan?

A. That's right, both temporary and permanent.

Q. I will ask you whether or not, in your opinion, that would be another factor in your statement that the intention of the framers and the people at the Convention of 1901 was to disfranchise poor whites as well as blacks?

A. Yes. In fact, in the debates at the Convention when there are allegations that all whites, including as they say, "vicious whites" will be permitted to register under the temporary plan, since it would be essentially impossible for any white man not to be able to register under the temporary plan, the principal reliance that the delegates in the majority on the Suffrage Committee who were defending the Suffrage Committee plan, the principal reliance that they have in defense of themselves is the crimes provision. They say, "No, it is not true that the really vicious whites will be permitted to register under the temporary plan because they will, if they had been convicted of crime, they will go out under Section 182."

* * * *

[68] Q. Was 182 discussed very much, Section 182?

A. No.

* * * *

[69] Q. The Constitution of 1875, Dr. Thornton, already provided that those who were convicted of a crime which resulted in imprisonment in the penitentiary would be disfranchised?
A. That's correct.
Q. And do you know of the crimes added to Section 182, if those, what the majority of those crimes were?
A. Well, the Crimes Article is another example of the way in which public relations is being used to convince the electorate, the white electorate that it is not voting to disfranchise itself but is voting for a constitution directed explicitly at blacks. Because as you say, the Constitution of 1875 already disfranchises anyone who is convicted of a crime for which you might be sentenced to the penitentiary. What the Constitution of 1901 does is repeats that same phrase, but before it gets to that phrase, [70] it goes through a long list of crimes for which you can be sentenced to the penitentiary. Now all of those are included in the general phrase, and you could simply have repeated the general phrase, but these crimes are put in precisely because they are associated in the public mind with the behavior of blacks. They are drawn by the Suffrage Committee from a report by a delegate from Dallas County who is named John Fielding Burns, who had drawn them up precisely because they were crimes which, in his practice as a Justice of the Peace, he had found to be — he had found blacks to be, as he thought, peculiarly subject to. But the Suffrage Committee takes them and puts them into the Article not with any real effect as it were, because the general clause incorporates them, but rather as a public relations gesture so that the white electorate, as they read this list, will have their mind focused on this as an anti-Negro measure.
Q. When in fact, if I understand you, the Constitution of 1875, in effect, already had provided the same thing?
A. That's correct.
Q. Doctor, have you researched between the time of the Constitution of 1901, which became effective —
A. Which was in December of 1901, that's right, end of November.

Q. — until the end of the temporary plan, which was [71] December 31st, 1902?

A. Correct.

Q. What percentage of whites were disfranchised with Section 182 and what percentage of blacks were disfranchised?

A. Well, give me two seconds and I can give you the figures on that.

On the census of 1900, there are 229,766 adult white males in the State, and 181,345 adult black males. We know the number of persons who were registered as a January 1st, 1903, which —

Q. By looking at the census figures and all the information, did you arrive at a percentage of whites and blacks disfranchised between December 1901 and December of 1902?

A. Well, it would appear that 178,365 blacks and 35,294 whites were disfranchised by the operation of the temporary plan.

Q. What percentage of those, then, white to black, were because of Section 182? I believe you told me some percentages before.

A. Yes. It would appear that possibly — these are extrapolating from figures as to those who have committed crimes taken from the biannual reports taken from the Board of Convict Inspectors. It would appear that about 3 percent of whites who were disfranchised because [72] of the operation of the crimes clause, and about seven and a half percent of blacks who were disfranchised were disfranchised because of the operation of the crimes clause.

* * * *

Q. (By Mr. Ward) Dr. Thornton, one or two last quick questions. In your opinion, I will ask you whether or not the poll tax, which was passed in the 1901 Convention, had the effect of disfranchising more whites than blacks?

A. Absolutely, because disfranchisement by the poll tax has to take place after you are registered. And since so few blacks were registered and since you have to be a registered voter be-

cause you can be disfranchised would have operated almost exclusively on the whites.

Q. And that was part of the scheme, to disfranchise poor whites as well as blacks?

A. That's right, it was so understood at the time. On this, I might say, as far as I know, there are no scholars who disagree.

• • • •

[73] Q. The aim of the 1901 Constitution Convention was to prevent the resurgence of Populism by disenfranchising practically all of the blacks and a large number of whites; is that not correct?

A. Yes, sir.

Q. The idea was to prevent blacks from becoming a swing vote and thereby powerful and useful to some group of whites such as Republicans?

A. Yes, sir, that's correct.

Q. The phrase that is quite often used in the Convention is to, on the one hand limit the franchise to intelligent and virtuous, and on the other hand to disenfranchise those that Francis Caffee refers to as "corrupt and ignorant," or sometimes referred to as the ignorant and vicious?

A. That's right.

Q. Was that not interpreted by the people at that Constitutional Convention to mean that they wanted to disenfranchise practically all of the blacks and disenfranchise those people who were lower class whites?

A. That's correct.

• • • •

[74] Q. Have you done any research into the relative conviction rates of blacks and whites for all crimes?

A. Yes, sir. As of September 1st, 1902, 87 percent of persons, males who were in State custody were black, and 13 percent were white. 94 percent of persons who were in county custody were black, and 6 percent were white.

Q. And the population of the State of Alabama was approximately 40 percent black at that time; is that correct?

A. Actually, 45. It was 55 percent white, 45 percent black.

Q. And about 45 percent of the male adult population was also black is that not correct?

A. Yes, sir, that is correct.

* * * *

[79] Q. And what we come out with is about a ten or eleven times as many blacks who were disenfranchised by the crimes provision as whites were; is that correct?

A. Well, that follows statistically from the evidentiary base. That is to say, the evidentiary base I am using, 1902, shows 80 something percent of blacks in State custody, prisoners in State custody, and 94 percent of blacks in county custody were prisoners in county custody were black, and consequently, since I am extrapolating from those figures, therefore the extrapolation is going to show the same relationships, necessarily. That would be about 90 percent.

Q. So all of the evidence that you have found shows that about ten times as many blacks were disenfranchised by the crimes provision as whites? We are talking about in raw numbers.

[80] A. Yes, sir, I do understand exactly what you are saying. And that is exactly correct, except that I worry slightly about the way in which you have phrased it. If you will permit me, within the perimeters of the prison population as it stands, the crimes clause, it appears to me, is operating essentially across the board of the prison population and it is drawing blacks and whites to disfranchisement in about the same percentage as the prison population at large. The crimes clause would disfranchise all of the persons in State custody and about two-thirds of the persons in county custody, and it draws from across the board. But within that limitation, if you accept that limitation, then the answer to your statement is yes.

Q. Near the end of the Convention, John Knox did make a speech to the Convention in which he summarized the work of the Convention, and in that speech is it not correct that he said that the provisions of the Suffrage Article would have a dispro-

portionate impact on blacks, but he disputed that that would be violation of the Fifteenth Amendment?

A. Yes, sir, that is true. Repeatedly through the debates, the delegates say that they are interested in disfranchising blacks and not interested in disfranchising whites. And in fact, they go out of their way to make that point, and it is so startling and offensive to modern [81] sensibilities, that we tend to be — that tends to overwhelm us. If you read the four volumes of the official proceedings — a fate I wouldn't wish on anyone — but if you happen to, you will come away with the sense that race simply dominates the proceedings of the Convention. But the point that I am trying to make is that this is really speaking to the galleries, that it is attempting to say to the white electorate that must ratify this constitution what it is necessary for that white electorate to be convinced of in order to get them to vote for it, and not merely echoing what a great many delegates say. Now, I would point out to you that there are occasions in the debates, particularly in the debate over the motions to extend the time of the temporary plan, that the desire to disfranchise poor whites pops out in the words of the majority of the Suffrage Committee. But in general, the delegates aggressively say that they are not interested in disfranchising any whites. I think falsely, but that's what they say.

Q. So they were simply trying to overplay the extent to which they wanted to disenfranchise blacks, but that they did desire to disenfranchise practically all of the blacks?

A. Oh, absolutely, certainly.

J. Morgan Kousser, PhD,

called as a witness, having been first duly sworn, was examined and testified as follows:

Examination

[3] By the reporter:

Q. Please state your full name.
A. By name is J. Morgan Kousser, k-o-u-s-s-e-r. My address is 1818 North Craig Avenue, Altadena, California.

Q. Please state your educational background beginning with college. Please include the subjects of your masters thesis and doctoral dissertation, if any.
A. I received an A.B. at Princeton University in 1965, a M. Phil, p-h-i-l, at Yale in 1968, and a P.h.D. from Yale in 1971 where I studied under Professor C. Vann Woodward, v-a-n-n.

The topic of my dissertation was, "The shaping of southern politics, suffrage restriction and the establishment of the one party south, 1880 to 1910."

• • • •

[5] Q. According to your research, was there much discussion at the 1901 Alabama Constitutional Convention regarding the desirability of the disenfranchising blacks?
A. The Alabama Constitutional Convention of 1901 was called for the prime purpose of disfranchising blacks. All scholars agree upon the subject. There was considerable discussion on and frank discussion of the subject by delegates to the convention as well as by newspapers, executive committees of the political parties and contemporaries in general in the period leading up to the Constitutional Convention.
Q. What was the tenor of the discussions?
A. The general tenor of the discussion was that virtually all Democrats wanted to eliminate virtually all blacks from the electorate and that white populace of Republicans as well as blacks, most of whom were Republican, wished to keep free and impartial suffrage for blacks.

Q. What was the specific source of the crime provision which was eventually adopted as Section 182 of the Constitution?

[6] A. Let me turn now to the question of the intentions of the framers of the Section 182 of the Alabama Constitution of 1901. There is very little direct evidence on the intention of all of the delegates who voted for Section 182, or even on the intentions of the Suffrage Committee of the Constitutional Convention. The committee did not keep any minutes or other records of internal debate, nor did any of its major figures leave paper collections relevant to this issue.

Newspapers carried a great deal of information and opinion on suffrage plans and strategies at the time of the 1901 convention, but no newspaper reporter seems to have had access to the committee debates.

There was almost no debate on the floor of the convention on Section 182. This might be taken to imply that the delegates did not think the section important. I believe that this would be a misinterpretation although I would not contend that the delegates thought the section as important as Sections 180 and 181.

The real reason that Sections 180 to 181 were subject to more debate is that they were more controversial, that the fighting grandfather clause was more clearly unconstitutional and unfair, and the poll tax and literacy and property tests were likely to disfranchise more whites than was Section 182.

A section such as 182, which was, as [7] everyone apparently knew, aimed chiefly at blacks and which seemed sufficiently neutral on its face to pass muster before the racist courts of the day was certain to be less controversial in this all-white convention, which was overwhelmingly committed to the disfranchisement of blacks.

Since direct evidence of the intentions of the delegates on this section is not available, we must rely on indirect and somewhat fragmentary evidence. Fortunately, all the indirect evidence points in the same direction.

The intentions of the delegates on Section 182 must be viewed in the context of the whole convention. There is no

question that the overriding issue in calling the convention was black disfranchisement. The proponents and delegates admitted this openly and repeatedly, and all scholars agree on this fact.

See, for example, Alabama Constitutional Convention Journal 1901, pages 1755, et seq, and pages 1776, et seq, and Kousser, *The Shaping of Southern Politics*, pages 165 to 171 and 250 to 251.

The fact that the delegates wanted and expected to disfranchise some whites as well, despite their guarantees to the contrary before, during and after the convention, does not undermine an equal protection challenge, even under the doctrines common in 1901, for they framed the suffrage restrictions to have a vastly disproportionate [8] effect on blacks.

Many of the delegates were lawyers, and they were familiar with the reigning, relevant case then; the Chinese laundryman case, Yick, y-i-c-k, Wo, w-o, versus Hopkins, 181 U.S. 356, 1886; and knew that barring a few whites would not be a constitutional saving grace.

In any event, their intention that the new suffrage regulations, as a whole, would have a disproportionate impact on blacks is very clear.

Another indirect piece of evidence of their intent is present on the face of the law in what crimes the conventioners defined as disfranchising, that they added to the 1875 Constitution's list, crimes which they thought blacks would be disproportionately likely to be convicted of, is especially apparent in their inclusion of sex-related crimes, living in adultery, assault and battery on the wife, rape and miscegenation.

Does anyone have to be reminded about the contemporary Southern fixation on black men raping white women, or the fact that whites were never convicted of miscegenation, and small property crimes, vagrancy and petty theft? Even if we had no better evidence than this of the intent of the framers, the manifestly disproportionate and racially discriminatory impact which the enforcement of this extended list would be expected to have would have been sufficient to indicate to me,

at least, that the [9] framers were aiming to disfranchise blacks by this section.

• • • •

[16] To sum up this point, the Alabama disfranchisers closely studied methods of disfranchisement elsewhere and in every state which had a petty crimes provision the intent was the same; to disfranchise blacks. Further, in their own state, they must have known that it was chiefly blacks who were convicted of such crimes, and thus could have understood the impact of the clause quite easily.

But, we have more direct evidence of the intent of the principal author of Section 182, John F. Burns, b-u-r-n-s; in his original draft Burns included:

[17] ". . . all those who are bastards or loafers or who may be infected with any loathsome or contagious disease."

It was, of course, common at the time for whites to think that these traits were predominant among blacks.

Burns also believed, in the summary of a recent scholar:

> "The crime of wife beating alone would disqualify 60 percent of the Negroes."

The quotation is from Jimmie, j-i-m-m-i-e, Frank Gross, g-r-o-s-s, *Alabama Politics and the Politics and the Negro, 1874 to 1901*, unpublished P.h.D. dissertation, University of Georgia, 1969, page 244.

Similarly, see McMillan, *Constitutional Development in Alabama*, page 275, footnote 76.

Burns says:

> "Actions again demonstrate the connection between past impact and present intention."

For as a long-time justice of the peace in Black-Belt Burnsville, Burns knew very well what crimes black people were likely to be convicted of, and therefore was easily able to tailor Section 182 to cover crimes which [18] would have the maxi-

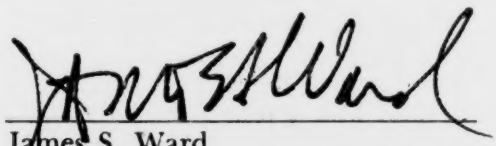
mum racially discriminatory impact. His position as chief framer of the section lends special importance to his clear and obvious intent.

* * * *

[24] Let me summarize my argument as a whole. Most of the evidence as to the intentions of the framers of Section 182 is indirect, but all of it points in the same direction. The section was designed to have a racially discriminatory disproportionate impact on blacks, drafted by ingenious lawyers who were trying to circumvent the Fourteenth and Fifteenth Amendments while seeming not to violate their letter. Section 182 may be defended by similarly clever but obviously flawed arguments.

Looking at all the evidence, it is my view as a historian that the intention of the framers was clear.

Submitted by



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CERTIFICATE OF SERVICE

I, James S. Ward, a member of the Bar of the Supreme Court of the United States and counsel of record of Nell Hunter, et al, individually and on behalf of all other members of Board of Registrars in the State of Alabama, appellants herein, hereby certify that on November 21, 1984, pursuant to Rule 33, Rules of the Supreme Court, I served three copies of the foregoing Joint Appendix on each of the parties herein as follows:

On Victor Underwood and Carmen Edwards, for themselves and all others similarly situated, appellees herein, by depositing such copies in the United States Post Office, Birmingham, Alabama, with first class postage prepaid, properly addressed to the post office address of Edward Still and Neil Bradley, the above named appellees counsel of record, at Edward Still, Suite 400, Commerce Center, 2027 First Avenue North, Birmingham, Alabama 35203 and Neil Bradley, ACLU Foundation, 52 Fairlie Street NW, Atlanta, Georgia 30303.

On the Solicitor General, Department of Justice, by depositing such copies in the United States Post Office, Birmingham, Alabama, with first class postage prepaid, properly addressed to the post office address of The Solicitor General, Department of Justice, Washington, D.C. 20530.

On William Bradford Reynolds, Assistant Attorney General, Charles J. Cooper, Deputy Assistant Attorney General, and Brian K. Landsberg, Esquire, by depositing such copies in the United States Post Office, Birmingham, Alabama with first class postage prepaid, properly addressed to the post office address of William Bradford Reynolds, Assistant Attorney General, Charles J. Cooper, Deputy Assistant Attorney General and Brian K. Landsberg, Esquire, United States Department of Justice, Washington, D.C. 20530.

All parties required to be served have been served.

Dated: November 21, 1984

James S. Ward
Special Assistant Attorney General
Attorney for Appellants

AFFIDAVIT OF SERVICE

STATE OF ALABAMA)

JEFFERSON COUNTY)

I, James S. Ward depose and say that I am an attorney in the law firm of Corley, Moncus, Bynum & DeBuys, and I am the attorney of record for Nell Hunter, et al, individually and on behalf of all other members of Board of Registrars in the State of Alabama, the appellants herein, and that on the 21st day of November, 1984, pursuant to Rule 33, Rules of the Supreme Court, I served three copies of the foregoing Joint Appendix on each of the parties required to be served therein, as follows:

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All parties required to be served have been served.

James S. Ward
Special Assistant Attorney General
Attorney for Appellants

Sworn to and subscribed before
me this the 21st day of November, 1984.

Notary